

I beg to move that the Bill be passed and that it come into force on the 1st Vrichigom 1077.

Seconded by Mr. Dharmaraja Iyer.

The motion was put and agreed to.

GUARDIAN AND WARDS BILL.

Mr. Kunhiraman Nair.—The Guardian and Wards Bill was introduced more than two years ago and referred to a Select Committee whose Report was presented to the Council on the 1st September 1900. The motion for taking that Report into consideration has, I understand, been deferred as it was thought that the consideration of the Report should be taken up only after the Civil Procedure Code Amendment Bill now before the Select Committee is gone through. On looking over the Bill which has recently been put in my charge, it struck me that the measure, though on the whole beneficial so far as it goes, does not satisfy fully the present day requirements of this State in the matter of legislation for the protection of the property of incapacitated persons. The Bill confines its provisions exclusively to the care of the person and property of minors, and no provisions for the care of the property of lunatics or persons of unsound mind have been enacted. The principle underlying legislation of this sort is that it is the right and duty of the sovereign power to protect the property of all disqualified persons, and it is, I believe, an undeniable proposition that the interests both of minors and of lunatics call for special protection as both these classes are deemed unfit to manage their affairs. The British Indian Statute Book presents evidence of the efforts made by the Indian Legislature, from time to time, to adequately safeguard the interests of both these sets of incapables. Besides the local Regulations and Acts constituting the Court of Wards for the different provinces in British India, dealing with estates of very large value there are several Acts making provision for the care of the property of lesser value, belonging to those who by reason of immature age or of mental imbecility are unable to protect their interests. The British Indian Act of 1890, on the lines of which the present Bill was framed, dealt with all classes of minors including European British Subjects for whom, however, this Council is precluded from legislating by the terms of the Legislative Council Regulation of 1073, section 12, clause (f), while the Acts XXXIV and XXXV of 1858 dealt with the estates of lunatics. The existence in the Indian Statute Book of Act XXXV of 1858 perhaps accounts for the omission of lunatics in the subsequent Act of 1890, but we have no law applicable to the lunatics' estate in our Statute Book, and though the Hindu and Mahomedan as well as the English law lays down certain general principles regarding the relationship of guardian and ward, the application of those general principles is not regulated here as in British India by any special enactment. The want of an enactment dealing with the property of minors and lunatics, not being European British subjects, is much felt here. Several cases that came up before the Courts have illustrated the injurious effects of the absence of any statutory law for the protection of the property of disqualified persons and the High Court, in its letter dated the 10th March 1893, strongly advocated legislation not only for minors' but also for lunatics' estate. No valid reason exists for confining the legislation to the person and property of minors to the exclusion of the property of lunatics or persons of unsound mind. Both are incapable of making valid contracts and are exempt by law from civil liability for their acts and the interests of both need safeguarding. The present Bill is the first attempt to introduce a well-recognised system in the administration of the property of disqualified persons, and the omission from the Bill of provisions touching the estates of lunatics would render the legislation wholly imperfect. We might supply the omission by introducing a separate enactment dealing with the estates of lunatics, but to do so, when the same object would be gained by inserting in the present Bill a few supplementary provisions, modelled with reference to corresponding legislation in British India as embodied in Act XXXV of 1858, would simply be to lay ourselves open to the charge of over-legislation. The advantage of having the whole law embodied in one enactment is obvious, and piece-meal legislation is to be avoided if possible. The interests of a progressive administration demand the enactment of proper provisions for protecting the estates of lunatics and minors, and both these classes

should be included in the present legislation. I may add that the provisions of Chapter XXX of the Civil Procedure Code for the appointment by the Civil Courts of Guardians "*ad litem*" for the conduct or defence of suits on behalf of disqualified persons are common to both minors and lunatics and that the Select Committee have, in their Report on this Bill, proposed the transfer of certain sections of the Bill as originally introduced, namely sections 34 and 49, to the Civil Procedure Code Amendment Bill now under consideration by the Committee. The extension of the general provisions of the Bill relating to the guardians of minors to the estates of lunatics as well, and the enactment of a few supplementary provisions for ascertaining by proper judicial enquiry whether a person alleged to be lunatic or insane is really so, would render the legislation as perfect as the circumstances permit; and the striking out from the Bill of provisions affecting European British subjects will remove the technical objections to which the Bill is open. The alterations and additions I now suggest may involve the necessity of recasting the Bill to some extent, and the work is one which is best done in a Select Committee. With these observations, I beg to move that the Guardian and Wards Bill as revised by the Select Committee be referred back to the Committee, with a view to embody therein suitable provisions calculated to extend to the estates of lunatics or insane persons unable to manage their affairs by reason of mental imbecility, the same protection as is afforded by the provisions of the present Bill to the estates of minors.

Seconded by Mr. Dharmaraja Iyer.

Mr. Sivasubramonia Pillai.—I beg to oppose the motion. What is proposed is substantially an amendment of a Bill, and according to the spirit of section 48 of the Rules for the conduct of business of the Council, such a motion cannot be entertained unless the Bill itself is actually before us for consideration. The Guardian and Wards Bill is not posted for to-day. Even on the merits of the motion, I hold a different opinion. The Guardian and Wards Bill has left the Select Committee stage and is pending before the Council. There is no section or provision of law or rule which enables us to send back a Bill to the Select Committee for further consideration. This is tantamount to what is called in the Civil Courts, a remand. Remand implies the existence of a superior and an inferior Court. No such idea can be imported in the relation in which the Select Committee stands to the general Council. The Select Committee is the general Council itself. If we sanction this departure from the existing practice, we shall sooner or later be under the necessity of sanctioning its converse too. Suppose, with regard to the present Bill itself, the Select Committee took it into their heads to say that they could not go on with the Bill unless the provisions regarding lunatics were inserted, and they sent back the Bill to the Council for further orders, what would be our position? Further, there is another difficulty. The object of sending back the Bill is said to be the ingrafting of suitable provisions regarding lunatics &c., whose case is parallel to that of minors. It must be borne in mind that it was a Bill with regard to minors that was formally introduced into the Council, discussed and referred to the Select Committee. The case of lunatics &c., though a parallel case, is yet a distinct one. We cannot in fairness amend the Bill when it is in its final stage, and we cannot remit the Bill to the Select Committee for the very reason that nothing can be in the Select Committee which was not before the Council. The case of lunatics must of itself form the subject matter of a separate Bill.

Mr. Poonen.—I am also against the motion now before the Council because, in my opinion, the ingrafting of new provisions into the old Bill is not at this stage desirable. It will also have the effect of unnecessarily delaying the original Bill.

Mr. Thanu Pillai.—I am decidedly of opinion that provisions regarding lunatics should find a place in this or a separate enactment. As Mr. Justice Kunhiraman Nair observed, it is of course desirable to avoid multiplicity of legislation. But after hearing what fell from my friend Mr. Sivasubramonia Pillai, I doubt whether technically we would be right in adopting the course suggested by the learned Mover. I am not prepared to accept the construction put upon Rule 48 by Mr. Sivasubramonia Pillai and the view propounded by him as to the competency of this Council to refer back a Bill to the Select Committee; but I think the second objection raised

by him is fundamental. The Bill originally introduced referred to minors alone. The Council affirmed the principle and the Select Committee to which it was referred revised it with reference to that principle. The present motion virtually introduces a *new* principle, and I seriously doubt whether, at this stage, we could enlarge the scope of the Bill as proposed. It seems to me that one of two courses may be adopted: either to proceed with the Bill as it is, reserving the provisions relating to lunatics for a separate enactment or, if the Member in charge of the Bill prefers it, and the Council agrees, to allow him to withdraw the Bill and introduce a new Bill on the lines now suggested and deal with it *ab initio*. I would, therefore, support the amendment.

Mr. Rajaram Row.—The object of Mr. Kunhiraman Nair is no doubt good. But considering that the original Bill was exclusively confined to minors and the principle affirmed by the Council was with reference to them alone, I doubt whether the scope of the Bill can now be extended. No doubt there have been cases in which a Bill that once passed through the Select Committee was referred back to it for further consideration, and the objections raised by the opposer of the motion against referring back this or any other Bill to a Select Committee are not, to my mind, quite cogent. But I think they were all cases where the principle of the Bill was not interfered with. Here, the original Bill was restricted in its scope to only one class of incapables while the amendment now sought to be introduced extends it to other classes entirely distinct from those contemplated by the Mover of the original Bill. I am, therefore, unable to support the motion.

President:—The Bill before us will require a thorough recasting throughout, if its scope is to be extended to lunatics. Such an amended Bill would, before its reference to the Select Committee, require publication as an original Bill, to give the public an opportunity of expressing their views upon it. Moreover, in British India there are two enactments relating to lunatics. Mr. Kunhiraman Nair desires to include in this Bill only the cases governed by Act XXXV of 1858. If his motion be granted, there will still be the necessity to introduce another Bill in respect of lunatics sent to the Lunatic Asylum. Considering the strong objections to the inclusion, at this stage, of lunatics in the Minors Bill, and the desirability of bringing in a Bill embodying the provisions of Acts No. XXXV of 1858 and No. XXXVI of 1858, the most convenient way of dealing with the subject seems to me to be, that the present Bill should proceed on the lines on which it was introduced, and that a new Bill be brought dealing with all matters connected with lunatics.

The motion was put to the vote and lost.

Mr. Kunhiraman Nair then moved that the Bill be taken up for consideration at the next meeting of the Council.

Seconded by Mr. Thanu Pillai.

Carried.

WEIGHTS AND MEASURES BILL.

Mr. Rajaram Row.—I have already obtained the permission of the Council to introduce a Bill to regulate weights and measures in this country. The Bill has just been published in the Gazette, but as it is not yet 15 days since the date of its publication, either the introduction of the Bill has to be deferred or Rule 33 should be suspended to enable me to introduce it now. I do not propose to move for the discussion of the principle to-day but would defer it to the next meeting, so that the public may have ample time before them. I beg to move that Rule 33 may be suspended to enable me to introduce the Bill at this meeting.

Seconded by Mr. Thanu Pillai.

The Council having suspended Rule 33, Mr. Rajaram Row introduced the Bill and moved that the discussion of the principle be taken up for consideration at the next meeting of the Council.

Seconded by Mr. Thanu Pillai.

The motion was put and agreed to.